Oakwood Hospital *and* Michigan Council 25, American Federation of State, County, and Municipal Employees, AFL–CIO. Cases 7–CA–27381 and 7–CA–27941

November 21, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On October 21, 1988, Administrative Law Judge Marvin Roth issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party and the General Counsel filed answering briefs. The Charging Party and the General Counsel filed cross-exceptions and supporting briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified below.

The judge found that the Respondent's actions in maintaining a state court trespass complaint against Gonzales did not violate Section 8(a)(1)[2] The General Counsel filed exceptions, urging, inter alia, that the maintenance of the lawsuit was unlawful.[3]

In *Loehmann's Plaza*, 305 NLRB 663, issued this date, we found that once a complaint issues alleging the unlawful exclusion of employees or union representatives from the employer's property, any state court lawsuit concerning the question is preempted. Further, the continued pursuit of such a lawsuit violates Section 8(a)(1). Applying *Loehmann's Plaza*, we find that the Respondent violated Section 8(a)(1) by continuing to maintain the lawsuit against Roy Gonzales after the General Counsel issued a complaint alleging that the Respondent had unlawfully denied Gonzales access to its cafeteria.[4]

In this case, the Respondent filed a state trespass complaint against Gonzales on October 7, 1987. The unfair labor practice charge was filed on October 9, 1987, and the General Counsel issued a complaint on January 11, 1988. Subsequently, on March 4, 1988, a Michigan state court dismissed the trespass complaint without prejudice, subject to reinstatement depending on the outcome of the unfair labor practice proceeding[5] As we stated in *Loehmann's Plaza*, supra, a respondent has an affirmative duty to take action to stay the state court proceeding following issuance of the Board complaint[6] There is no evidence that the Respondent took any action to stay the court proceeding. We therefore find that the Respondent violated Section 8(a)(1) by its continued maintenance of the state court lawsuit after the complaint in this proceeding issued on January 11, 1988.[7]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Oak-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] For the reasons set forth by the judge, we adopt his findings that the Respondent violated Sec. 8(a)(1) by denying Union Representative Roy Gonzales access to its cafeteria by causing and attempting to cause his removal from the Respondent's cafeteria, and by engaging in surveillance of employees' union activities.

[3] While there are some inconclusive references in the transcript which suggest that the action the Respondent invoked against Gonzales might be a criminal proceeding, the General Counsel does not so argue and it is apparent from the references to the action as a ''lawsuit'' that the General Counsel is not asserting that the state court proceedings are criminal. In any event, the record is insufficient to establish that the complaint for trespass was criminal in nature.

[4] Under *Loehmann's Plaza*, supra, the Respondent's filing of the lawsuit and maintenance of the lawsuit up until the time the General Counsel issued a complaint did not constitute a violation. In this regard, we note that the lawsuit had a reasonable basis. We do not pass on whether the lawsuit was filed for a retaliatory motive.

[5] Contrary to our dissenting colleague, we do not believe that this is a case where the lawsuit is over and the respondent-plaintiff has lost. See *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731, 747 (1983). Rather, the Michigan court has not ruled on the case, and the case is subject to reinstatement pending the outcome of the instant case. Our colleague further argues that Respondent's lawsuit cannot be reinstated. He bases this argument on the fact that the Board has now decided that the expulsion of Gonzales from the cafeteria was unlawful. Our colleague ignores the fact that the Board's decision is subject to review by a Federal circuit court. Hence, there is nothing to prevent the Respondent from seeking reversal and, if successful, resuming its state court lawsuit.

[6] If it takes this action within 7 days, the Board will not find a violation. *Loehmann's Plaza*, supra at 671.

[7] In order to place Gonzales and the Union in the position they would have been in absent the Respondent's unlawful conduct, we shall order the Respondent to make them whole for all legal expenses, plus interest, incurred in the defense of the Respondent's lawsuit after the January 11, 1988 issuance of the complaint in this proceeding.

Member Oviatt agrees in full with respect to the merits of this decision and the rationale for it, as described above. He does not agree, however, that this Respondent should be held monetarily liable for its failure to seek dismissal of the state court action. He reads the law, prior to the decision here, to have been somewhat unsettled; compare the Board's decision in *Giant Food Stores*, 295 NLRB 330 (1989). Accordingly, in this case he would not require the Respondent to make the Union and Gonzales whole for their litigation expenses in the state court action. In future cases he would agree, now that Board law is settled on this issue, that the requirement that a respondent pay the union's litigation expenses incurred in defending a state court suit from the date of the issuance of the complaint by the General Counsel is an appropriate remedy if a respondent fails to promptly seek dismissal of the state court injunction action.

wood Hospital, Dearborn, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(c) and reletter the subsequent paragraph.

''(c) Prosecution, after the issuance of a Board complaint, of state court trespass complaints seeking to prevent the exercise of protected organizational activity in the Respondent's cafeteria at times when the organizers are conducting themselves in a manner consistent with the purposes of the establishment.''

2. Insert the following as paragraph 2(a) and reletter the subsequent paragraphs.

''(a) Reimburse Roy Gonzales and the Union for all legal expenses, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), incurred after the January 11, 1988 issuance of the complaint in this proceeding in the defense of the Respondent's lawsuit against Gonzales.''

3. Substitute the attached notice for that of the administrative law judge.

MEMBER DEVANEY, concurring in part, dissenting in part.

I agree with my colleagues' adoption of the judge's findings that the Respondent violated Section 8(a)(1) of the Act ''by selectively and disparately denying and attempting to deny nonemployee union organizer [Gonzales] access to the cafeteria'' and by engaging in surveillance of employee union activities. Because I find that the Respondent's trespass lawsuit against Gonzales had a retaliatory motive, I do not agree with my colleagues' conclusion that the Respondent's filing and maintenance of the lawsuit before it was preempted did not violate Section 8(a)(1). I join that part of the opinion where my colleagues hold that the Respondent violated Section 8(a)(1) by maintaining the lawsuit after it was potentially preempted[1] by the General Counsel's issuance of a complaint alleging that the Respondent had unlawfully denied Gonzales access to its cafeteria.[2]

During 1987, Union International Representative Gonzales occasionally dined at the Respondent's cafeteria, which was open to the public as well as to the Respondent's employees. During these visits, which Gonzales admitted were primarily for the purpose of organizing, Gonzales ordered food, sat at a table, and met and talked with employees. On September 23, the Union filed a petition seeking to represent the Respondent's registered nurses. When questioned by the Respondent's head of security during Gonzales' visit to the cafeteria on September 27, Gonzales stated that he was organizing the registered nurses.

On his next visit to the cafeteria, on October 1, the Respondent asked Gonzales to leave, but Gonzales refused. The Respondent summoned the police, and Gonzales complied with a police officer's request to leave.

A similar sequence of events occurred on October 5, except that the police declined to ask Gonzales to leave. Two days later the Respondent filed a complaint for trespass against Gonzales in a Michigan court.

In considering whether the Respondent's efforts to exclude Gonzales from its cafeteria violated Section 8(a)(1), the administrative law judge noted that the Respondent admitted that it had initiated efforts to expel Gonzales from the cafeteria because it had learned that he was there to organize the registered nurses. The judge stated that the Board, with court approval, had long held that an employer may not exclude nonemployee union organizers from an eating establishment on its premises which is open to the public as long as the organizers conduct themselves in a manner consistent with the purposes of the restaurant.

The judge found that on each occasion that the Respondent sought to evict Gonzales he was dining in the cafeteria and talking to employees and was not tablehopping, distributing literature, or engaging in any unusual activity. Finding that the Respondent attempted to exclude and excluded Gonzales from its cafeteria for discriminatory reasons, i.e., because he discussed organizational activity with employees, the judge concluded that the Respondent violated Section 8(a)(1) by disparately and discriminatorily denying Gonzales access to the cafeteria.

The essence of the violation found by the judge was the Respondent's discriminatory treatment of union organizer Gonzales. The Board precedent on which the judge relied—holding unlawful an employer's exclusion of union organizers from an eating establishment open to the public—is premised on the discriminatory nature of the employer's conduct. Moreover, the judge noted the Respondent's admission that it tried to expel Gonzales once it learned that he was engaged in organizing activity. Inasmuch as the Respondent's efforts to invoke its property rights and exclude Gonzales from its cafeteria were motivated by a discriminatory reason, it is plain that its trespass lawsuit against Gonzales—which sought the same end as the Respondent's requests to Gonzales to leave and was filed soon after the police refused to expel Gonzales—was instituted for this same discriminatory reason. In my view, the Respondent's retaliatory motive in filing and maintaining its lawsuit against Gonzales is obvious. Here,

[1] See *Loehmann's Plaza*, 305 NLRB 663, 673–674 fn. 3, issued this date (Member Devaney, dissenting).

[2] As my conclusion that the Respondent's filing and maintenance of its lawsuit violated Sec. 8(a)(1) is not premised on any new legal standard, no question of retroactive application of a new standard is presented. Thus, I agree with the ordering of a remedy that includes requiring the Respondent to reimburse Gonzales and the Union for legal expenses incurred in defending against the Respondent's lawsuit.

the Respondent's very assertion of its property rights was for a discriminatory, retaliatory purpose.

In *Bill Johnson's Restaurants v. NLRB*,[3] the Supreme Court set forth the criteria for determining whether a nonpreempted lawsuit violates the Act. The Court's principal concern in formulating its criteria was that the Board not order a party to cease prosecution of a pending lawsuit that might be meritorious. The Court emphasized that the Board could not find a pending lawsuit violative unless the lawsuit both lacked a reasonable basis in law or fact and had a retaliatory motive. Once the lawsuit was over and the plaintiff had not prevailed, however, the possibility that the Board might enjoin a meritorious lawsuit no longer existed. Thus, there was no longer any reason to require a showing that the lawsuit lacked a reasonable basis.[4] Accordingly, to establish a violation for a lawsuit in that posture, only a retaliatory motive had to be shown.[5]

Contrary to my colleagues, I find that in the present case, the Respondent's trespass lawsuit is over and the Respondent did not prevail. The Michigan court dismissed the lawsuit. Although the dismissal was without prejudice, reinstatement of the lawsuit was to depend on the outcome of the present unfair labor practice proceeding. Because we now find in this proceeding that the Respondent's expulsion of Gonzales from its cafeteria violated Section 8(a)(1), it is clear that the Respondent's trespass lawsuit cannot be reinstated.

Consequently, as the Respondent's lawsuit is over and the Respondent did not prevail, it need not be shown that the lawsuit lacked a reasonable basis in law and fact, and my colleagues' finding of no violation based on the failure to make this showing is erroneous. Rather, all that need be shown to establish that the lawsuit violated the Act is retaliatory motive. As indicated above, I believe the record clearly established that retaliatory motive. Consequently, unlike my colleagues, I believe that the Respondent's filing and maintenance of its trespass lawsuit against Gonzales violated Section 8(a)(1) from the outset.

The test for determining whether a preempted lawsuit violates the Act is not controlled by *Bill Johnson's*. For reasons stated in my separate opinion in *Loehmann's Plaza*, supra, however, in determining whether a preempted lawsuit violates Section 8(a)(1), I look to whether the lawsuit had a retaliatory motive or lacked a reasonable basis. As set out above, I found the Respondent's lawsuit here to be prompted by a retaliatory motive. In addition, since the Respondent's lawsuit has ended and the Respondent did not prevail, the reasonable basis question is not relevant here.

In any event, having concluded that the Respondent's lawsuit from the outset violated Section 8(a)(1), it would be incongruous indeed to then hold that after the General Counsel issued his complaint the Respondent's lawsuit ceased to violate the Act. Accordingly, I concur with my colleagues' decision that the Respondent's maintenance of its lawsuit after it became preempted violated Section 8(a)(1).

[3] 461 U.S. 731 (1983).

[4] As the Court stated:

> If judgment goes against the employer in the state court . . . or if his suit is withdrawn or is otherwise shown to be without merit, the employer has had his day in court, the interest of the State in providing a forum for its citizens has been vindicated, and the Board may then proceed to adjudicate the . . . unfair labor practice case. [Id. at 747.]

[5] See, e.g., *Machinists Lodge 91 (United Technologies)*, 298 NLRB 325 (1990).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT deny or attempt to deny nonemployee union organizers access to the cafeteria at our Hospital while permitting other visitors and guests of hospital personnel to use the cafeteria, or otherwise selectively and disparately deny such organizers access to the cafeteria.

WE WILL NOT engage in surveillance of conversations and meetings between employees and union organizers, or engage in surveillance of other employee union activity.

WE WILL NOT prosecute, after the issuance of a Board complaint, state court trespass complaints seeking to prevent the exercise of protected organizational activity in our hospital cafeteria at times when the organizers are conducting themselves in a manner consistent with the purposes of the cafeteria.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse Roy Gonzales and the Union for all legal expenses, plus interest, incurred after the Jan-

uary 11, 1988 issuance of the complaint in this proceeding in the defense of our lawsuit against Gonzales.

OAKWOOD HOSPITAL

Ellen Rosenthal, Esq., for the General Counsel.
Paul H. Townsend Jr., Esq. and *Mathew Derby, Esq.*, of Detroit, Michigan, for the Respondent.
Ann Hildebrant, Esq., of Detroit, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge. These consolidated cases were heard at Detroit, Michigan, on June 30 and July 1, 1988. The charges were filed respectively on October 9, 1987, and April 1, 1988, by Michigan Council 25, American Federation of State, County and Municipal Employees, AFL–CIO (the Union). The consolidated complaint, which issued on May 19, 1988, alleges that Oakwood Hospital (the Company or Respondent) violated Section 8(a)(1) of the National Labor Relations Act. The gravamen of the complaint is that the Company allegedly (1) denied Union Representative Roy Gonzales access to its cafeteria by causing and attempting to cause his removal from the cafeteria; (2) filed and maintained a complaint for trespass against Gonzales; and (3) engaged in surveillance of employees' union activities. The Company's answer denies the commission of the alleged unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally and to file briefs. General Counsel, the Union and the Company each filed a brief.

On the entire record in the case, and from my observation of the demeanor of the witnesses, and having considered the briefs and arguments of the parties, I make the following

FINDINGS OF FACT

The Company, a Michigan corporation with an office and place of business ln Dearborn, Michigan, is engaged as a health care institution in the operation of an acute care hospital providing medical and professional care services. In the conduct of its operations the Company annually derives gross revenues in excess of $250,000, and annually purchases, and receives at its hospital, goods and material valued in excess of $50,000 directly from points outside Michigan. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

I. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND: THE HOSPITAL FACILITY, PUBLIC ACCESS TO THE HOSPITAL AND ITS CAFETERIA, AND THE UNION'S ORGANIZATIONAL CAMPAIGN

The hospital is located on a tract of land in a predominantly residential area. On three sides the hospital premises are separated from adjoining residential subdivisions by berms or fences. On the fourth side is Oakwood Boulevard, a public thoroughfare, and there is a public sidewalk (but no hospital entrance) adjacent to the hospital premises. Across Oakwood Boulevard is a church and parochial school. The nearest commercial area is about one-quarter mile away. The hospital's main building is 10 stories, and its adjacent Skellman Wing is 4 stories. The hospital also has a three story parking garage. Nonemployees must pay to park. The hospital building has four entrances: main, emergency, employee, and outpatient center. However there are no signs, guards, or other barriers restricting access either to the hospital grounds or the hospital building. Visitors may stop at the information desk, but are not required to do so, and the hospital does not issue visitor passes. Patient visiting hours are nominally from 11:30 a.m. to 3:30 p.m. and 4:30 to 8:30 p.m., but in practice this restriction is not enforced.

The hospital can accommodate 615 in-patients. There are about 3000 employees. The Union's Local 2568 represents a unit of some 625 service and maintenance employees. Licensed practical nurses (LPNs) are represented by an independent labor organization. The remainder of the Company's employees, including registered nurses (RNs) are unorganized. In January 1987 the Union commenced an organizational campaign among the approximately 688 RNs. International Representative Roy Gonzales was assigned to the campaign. Gonzales has no responsibilities or duties in connection with the service and maintenance unit. In the course of its campaign, the Union conducted meetings at its hall, mailed and distributed literature, and solicited and obtained authorization cards. The Union was assisted by an internal organizing committee which consisted of about four employees, and by employee officers of Local 2568. The Union also compiled a substantial although not complete list of the names and addresses of the prospective unit employees. As will be discussed, the Union and particularly Gonzales also made use of the hospital cafeteria, and that activity is the focal point of the issues in this case. On September 23, 1987, the Union filed a petition for a Board-conducted election among the RNs. The Company contended that a unit of all professional employees was appropriate. A hearing on the petition was held in October 1987. On October 21, 1987, the Union withdrew its petition. From then until March 1988 the Union suspended its organizational activity.

Until April 1987 the hospital had a 44-seat coffeeshop which was intended for the use of visitors, and a 404-seat cafeteria, open 24 hours, which was intended primarily as an employee dining area. The coffeeshop was open until 8 p.m., after which only the cafeteria was available for dining. In practice, as admitted by Company Director of Food and Nutrition Services Harriet Fisher, visitors were free to use the cafeteria at any time of day or night. However the hospital underwent construction which in April and May 1987 resulted in a reduction of available dining space. The Company closed the coffeeshop and reduced the size of the cafeteria. The Company took some measures to offset some of this loss of space. In January 1988 the Company opened a vending machine area near the location of the former coffeeshop. However these machines did not provide meals. The Company also rearranged the cafeteria chairs and tables in ''military layout,'' specifically, with combined tables each seating about 20 persons on one side of the cafeteria and 8 to 10 persons on the other side. The Company also made available two smaller dining rooms, designated ''A'' and ''B'' respec-

tively. However the total capacity of these three dining areas was 344. (A separate dining room was available for doctors.) The Company also provided an outdoor picnic area during the summer of 1987, but did not provide such service in 1988.

In January 1988, when it opened the vending machine area, the Company posted a sign near the cafeteria entrance which was soon modified to read as follows:

RESERVED
Vending machines are available off the outpatient surgery center lobby. We would appreciate your using this area between the hours of
11:00 a.m.—1:00 p.m.
and
7:15 p.m.—8:15 p.m.
when our staff is given time for meals.
Thank You!

As indicated by the sign's wording, the Company requested, but did not direct visitors to refrain from using the cafeteria at certain times. In January 1988 the Company began issuing to incoming patients a 20-page ''patient information'' booklet, with 3 additional inserts. Copies of the booklet were available at the information desk, but not distributed to visitors or employees. Assuming that the patient had the patience (no pun intended) and fortitude to wade through this material, he or she would no doubt have been fascinated to read in the third insert that the cafeteria was ''closed to visitors'' from 11:30 a.m. to 1 p.m., 7:15 to 8 p.m. and 4 to 4:30 a.m. The Company also has an administration policy and procedure manual. In December 1986 the manual was amended in part to prohibit nonemployees from soliciting employees or distributing literature on company property without company approval, except for suppliers and prospective suppliers to the hospital. In January 1988 the manual was further amended, in sum, to limit public access to the hospital, in order to ''provide for proper security for employees, patients, and visitors.'' The provision limited access to the hospital to certain categories of persons, and by its terms would have excluded such persons as—guests of employees, e.g., their friends and relatives, or those having personal business with them. Company Assistant Vice President for Human Resources Mark Jenkins testified that the January 1988 amendment was promulgated because of Company concern about ''non-employees coming in and being on the premises when they really had no business being here.'' The policy and procedure manual is not distributed or made available to employees, and no steps were taken to inform employees or prospective visitors of its provisions.

Director of Food Services Fisher testified that the Company took measures to improve food service in response to a complaint by Local 2568 that the public should be kept out of the cafeteria in order to allow room for employees. Fisher testified that in addition to measures described above, she had a food service supervisor stand at the cafeteria entrance from 11:30 a.m. to 1 p.m., asking nonemployees not to use the cafeteria. Fisher further testified that food servers were instructed to request (but not require) nonemployees to refrain from using the cafeteria during peak times. In fact (apart form the incidents involving International Representative Gonzales, which will be discussed) the Company never excluded the general public from using the cafeteria at any time of day or night, and made only token gestures to discourage such use at peak times. Nonemployees are readily identifiable, because employees wear identification badges. Every person who purchases food at the cafeteria must be identified as either an employee or nonemployee, because employees are charged at a lower rate. The cafeteria is primarily used by employees, and most nonemployees using the cafeteria are visitors to patients. However other members of the public use the cafeteria without challenge, including use at peak meal times. Construction workers, who are not employed by the Company and are easily identifiable by their clothing and equipment, regularly dine in the cafeteria. Employees Diane Mays and Charlene Meyers testified in sum that relatives have met and dined with them in the cafeteria. Meyers testified that she met with an attorney in the cafeteria. Employee Robert Holbrook testified that he knew of a family which frequently had their meals in the cafeteria, and that the father of a kitchen employee comes in to visit her and eats in the cafeteria. Employee (porter) Brad Kurczewski testified that a friend visited him in the kitchen. International Representative Gonzales testified without contradiction that throughout the period since February 1987, during which time he was often in the cafeteria at peak and other times, no cafeteria supervisor or food server ever asked him not to dine in the cafeteria. Employees Karen Burgess and Patricia Kososki, who frequently dine in the cafeteria during the peak lunch period, testified in sum that they never saw or heard a cafeteria supervisor or food server ask a nonemployee not to dine in the cafeteria. Employee Meyers testified in sum that on an average of once in 3 weeks, she has seen a cafeteria supervisor stop a nonemployee, but that this was not a regular practice. Cafeteria supervisors frequently station themselves at the entrance to the cafeteria at noontime. However they do so primarily to keep the food service line orderly and assure that there is an adequate supply of utensils. In fact, there is sometimes congestion and crowding in the service line at peak times. However the evidence indicates that although the cafeteria is normally crowded around noon during the week (although not on weekends) there is always available seating. No evidence was presented which would indicate that any person has had to wait for a seat. The Company presented in evidence photos of sections of the cafeteria. Interestingly, one of them, which was taken at 12:20 p.m. (R-4) shows a number of empty seats. Even Director Fisher testified that the present system has ''worked out considering the tightness, pretty well.'' As will be discussed, management personnel had no difficulty finding seats near Gonzales when they sought to engage in close surveillance of his activities. In sum, I find that (1) the Company has no practice of excluding the public from its cafeteria; (2) the Company has no general practice of excluding or discouraging visitors and the general public from dining in the cafeteria during peak meal periods, and has made only token efforts to discourage, but not prohibit such use; and (3) although the cafeteria is often crowded at noontime, there is no shortage of seating space.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Alleged Unlawful Actions in Excluding or Attempting to Exclude Gonzales From the Cafeteria*

International Representative Gonzales testified that in connection with the organizational campaign, he visited the hospital on an average of three to four times per week during the period from February to June 1987.[1] He testified that he followed a pattern which he continued throughout the campaign. On each visit he went to the cafeteria, ordered food, and sat down at a table, usually in the northeast corner of the dining room. He met and talked with employees. Gonzales wore a ''Vote AFSCME'' button. Gonzales testified that during the period from February to June he was usually in the cafeteria for 3 to 4 hours at a time, between 11 a.m. and 3:30 p.m. Gonzales admitted that the meals were incidental to his primary purpose of organizing. He testified that he stopped visiting the hospital in June when he had to conduct another campaign, and did not return until late September. Gonzales testified that on every occasion throughout the campaign he went only to the cafeteria, except on one occasion in January 1987 he went to Local 2568's office on the second floor to meet Local President (and employee) Charlene Meyers. Company Assistant Vice President Jenkins testified that to his knowledge Gonzales visited the cafeteria at least six or seven times prior to September 1987, and that he was observed talking with the Local leadership. Jenkins testified that he knew there was an organizing campaign, and suspected but did not know as a fact, that Gonzales was present for the purpose of organizing the RNs. It is undisputed that the Company did not ask Gonzales to leave the cafeteria or hospital premises prior to September. I agree with the Company's contention (Br. 6–7) that Gonzales in his testimony probably exaggerated the extent of his presence in the cafeteria during the spring of 1987. Charlene Meyers, who was active in the organizing campaign, testified that she usually saw Gonzales once every week or 2 weeks during this period. None of General Counsel's other employee witnesses corroborated his presence in 1987. Rather, they testified concerning his presence in 1988. I find that Meyer's testimony most accurately reflects the extent of Gonzales' present in the first half of 1987.

Gonzales testified that he returned to the hospital in late September, and was present in the cafeteria on September 21 from 11 a.m. to 3:30 p.m., on September 23 from 11 a.m. to 1:30 p.m. and 5 to 9 p.m., and on September 27 to 28 from 11:30 to 4:30 a.m. (a continuous period of 17 hours). Gonzales testified that about midnight of September 27, two supervisors came to his table and asked who he was and what was his business. Gonzales answered that he represented the Union and was organizing the RNs. They said he had no business being there. Gonzales disagreed, and the supervisors summoned the Company's head of security. A similar dialogue ensued between the security officer and Gonzales, with Gonzales insisting that he had a right to be in the cafeteria. The officer said he would speak to Jenkins, but upon returning, told Gonzales to enjoy his coffee. As indicated, Gonzales remained until 4:30 a.m.

Gonzales testified that he next went to the cafeteria on October 1, arriving at about 5:30 p.m. There is no significant dispute about what occurred on the occasion described by Gonzales, except that Jenkins testified that the incident occurred on September 24. Gonzales purchased food and sat down at a table with three employees. Jenkins was informed of his presence, and that he was talking to nonbargaining unit employees. Jenkins testified that this was the first time he learned of Gonzales' presence in the cafeteria at a time other than midday. Jenkins and a security officer approached Gonzales and asked what he was doing. Gonzales said he was organizing the RNs. Jenkins asked him to leave. Gonzales said he had a right to be there, and had been permitted in the past. Jenkins summoned two more security officers. Gonzales said they would have to call the Dearborn police, and Jenkins obliged. The police arrived, and after speaking to Jenkins and questioning Gonzales, they told Gonzales he was trespassing, and asked him to leave. Gonzales did so (Gonzales testified that he left about 8:30 p.m. Jenkins testified that Gonzales left about 6:45 p.m.)

Gonzales next came to the cafeteria on October 5 at about 5 p.m. A similar sequence of events occurred as on the previous occasion, except that this time Company Labor Relations Supervisor Jill Beaver, instead of Jenkins, was the chief company representative on the scene. Again the Company summoned the police. However this time, after some internal consultation, the police declined to arrest Gonzales or ask him to leave. Instead they advised the Company to file a complaint. Gonzales remained in the cafeteria until about 5 a.m. He did not return until March 1988. On October 7, the Company filed a complaint for trespassing against Gonzales in a Michigan court. On March 4, 1988, the court dismissed the complaint without prejudice, subject to reinstatement depending on the outcome of the present unfair labor practice proceeding.

The complaint alleges that the Company violated Section 8(a)(1) by: (1) on or about October 1, denying Gonzales access to the cafeteria by summoning security guards and police and causing his removal; (2) on or about October 5, attempting to deny him access by summoning police and attempting to cause his removal; and (3) filing and maintaining its complaint for trespassing against Gonzales. Company candidly admits the reason for its actions (Br. 7): ''Prior to September 1987, Oakwood had no knowledge of the purpose of Gonzales' visits. When Oakwood finally learned the purpose of Gonzales' visits on September 24, 1987, Jenkins personally confronted Gonzales, and asked him to leave the cafeteria.'' (See also Br. 28.) The Company's course of conduct was consistent with this admission. Throughout early 1987 the Company knew of and tolerated Gonzales' presence on the possibility that he may have been there in connection with the service and maintenance unit. However as soon as Jenkins learned that Gonzales was talking to nonunit employees, he immediately took steps to expel him. In sum, the Company sought to deny Gonzales access to the cafeteria because of the subject matter of his conversations with employees at the dinner table, i.e., organizational activity. In light of this admission, much of the evidence which the Company introduced or sought to introduce is plainly irrelevant or immaterial, at least to the allegations discussed in this section (the relevance of such evidence to the allegations of surveillance in the spring of 1988 will be discussed in the next section of this decision). The Company introduced evidence concerning crowded conditions in the cafeteria. However the

[1] All dates in this section are for 1987 unless otherwise indicated.

Company tolerated Gonzales' presence at noontime throughout the spring of 1987. The Company acted to remove Gonzales on two occasions, both in late afternoon, when the cafeteria would not be crowded. The Company makes much of the fact (Br. 17) that Gonzales often remained in the cafeteria for long periods of time. However on the occasions when the Company attempted to evict Gonzales, he had purchased food and had been seated less than 1 hour. In contrast, on an earlier occasion when Gonzales had been in the cafeteria for over 12 hours, a company supervisor told him to enjoy his coffee, i.e., that the Company had no objection to his prolonged presence go long as he acted ln the manner of a cafeteria patron. The difference was that Jenkins later learned that Gonzales was engaged in organizational activity.[2] On each occasion that the Company sought to evict Gonzales, he was dining in the cafeteria and talking to employees. He was not tablehopping or distributing literature, or engaging in any unusual activity other than conversation, if that may be called unusual.[3]

The Board, with court approval, has long held that an employer may not exclude nonemployee union organizers from a food service establishment located on its premises, whether restaurant, cafeteria, or snackbar, which is generally open to the public, ''so long as [the organizers] conduct themselves in a manner consistent with the purposes of the restaurant.'' Therefore the Board and courts have held that an employer violates Section 8(a)(1) by attempting to exclude or excluding the organizers, whether by a no-solicitation rule, obtaining police assistance, or otherwise taking action to exclude the organizers. *Ameron Automotive Centers*, 265 NLRB 511 (1982); *Montgomery Ward & Co.*, 256 NLRB 800 (1981), enfd. 692 F.2d 1115, 1122 (7th Cir. 1982); *Montgomery Ward & Co.*, 263 NLRB 233 (1982), enfd. as modified 728 F.2d 389, 391 (6th Cir. 1984). The test is not, as the Company argues (Br. 18), whether the organizers are primarily present for dining purposes or for organizational activity. If the organizers in the above-cited cases had gone to the dining establishments primarily for the purpose of dining, there would have been no occasion to litigate those cases. Rather, as indicated, the test is whether the organizers conduct themselves in a manner consistent with the purposes of the establishment. If they do, by purchasing food or beverage, and behave themselves in an orderly fashion, then the employer cannot censor their dining table conversation by excluding them if they choose to discuss organizational activity. In the above-cited cases, the eating establishments were each located on the premises of a retail store. Therefore the establishments were normally patronized by employees and customers of the stores. In the present case, the cafeteria is located in a hospital. Therefore the cafeteria is primarily patronized by employees and visitors to patients. These are differences without a distinction. In the present case the cafeteria, like the dining facilities in the cited cases, were generally open to the public. Therefore the Company could not lawfully exclude Gonzales as a patron simply because he discussed organizational activity at the dining table. The Board has not discussed the applicability of the *Montgomery Ward* line of cases to a hospital cafeteria, or whether union organizers have an absolute right of access to nonpatient care areas of a hospital. However the Board has held that a hospital may not discriminatorily exclude union organizers from its cafeteria, where the cafeteria is generally open to visitors although primarily intended for and used by employees. *Southern Maryland Hospital*, 276 NLRB 1349 fn. 2 (1985), enfd. in pertinent part 801 F.2d 666 (4th Cir. 1986). In the present case, the Company attempted to exclude and excluded Gonzales from its cafeteria for discriminatory reasons, i.e., because he discussed organizational activity with employee patrons. Therefore *Southern Maryland* governs. I find that the Company violated Section 8(a)(1) of the Act by disparately and discriminatorily denying Gonzales access to the cafeteria, specifically, by summoning police and security guards and causing his removal, and by subsequently summoning police and attempting to cause his removal. The Company thereby interfered with the Section 7 rights of its employees.[4]

However, I find that the Company did not violate the Act by filing and maintaining a complaint for trespass asainst Gonzales. General Counsel contends (Br. 22–23) that the complaint was unlawfully maintained because the Union, by filing the initial unfair labor practice charge, and General Counsel by issuing the present complaint, deprived the state

[2] As indicated, Jenkins testified that he had no knowledge of Gonzales' presence during the evening until the events which he described as occurring on September 24. However the Company does not dispute that Gonzales remained in the cafeteria for some 17 hours, without any attempt by the Company to remove him (Br. 17). Moreover, as a company supervisor authorized him to remain (thereby indicating the Company's policy), it is immaterial whether Jenkins personally knew of this matter.

[3] The Company offered to prove that on occasions in August and September 1987, at night, there were break-ins in the personnel office which seemed directed at obtaining personnel information. The Company also offered to prove that during the period of January 18 through March 4, 1988, there were incidents of vandalism in the dietary department. The Company represented that it was not accusing Gonzales of such misconduct. On the basis of that representation, I rejected the proffer of evidence as irrelevant. If the Company was not accusing Gonzales of misconduct, then it is difficult to see what relevance these acts of vandalism would have to company actions taken only against Gonzales, without regard to the thousands of other people, including both employees and visitors, who have access to the hospital both day and night. In rejecting the proffers, I have proceeded on the premise that the asserted facts are true, but irrelevant.

[4] The present case is distinguishable from one involving a dining facility which is not open to the public, but is available only for the use of employees. See *Intercommunity Hospital*, 255 NLRB 468 (1981). In such cases the organizers would have a right of access only if they lacked other reasonable means of effectively communicating with the employees, i.e., if they met the *Babcock & Wilcox* standard (*NLRB v. Babcock & Wilcox Co.*, 251 U.S. 105, 112–113 (1956), as applied by the Board under the standards of *Fairmont Hotel*, 282 NLRB 139, 141–142 (1986). See also *Montgomery Ward & Co.*, 288 NLRB 126 fn. 8 (1988). As the Company's cafeteria is open to nonemployees, it is not necessary to consider the *Babcock & Wilcox* standard. If the cafeteria were in fact restricted only to employees, then I would find that the Company could lawfully exclude Gonzales, because the Company's property rights and the employees' organizational rights would be relatively equal, and the Union had reasonable alternative means of communicating with the employees. See *New Process Co.*, 290 NLRB 704, 706–707 (1988). In applying either the *Montgomery Ward* line of cases or *Babcock & Wilcox*, it is immaterial whether the employer permits commercial vending on its premises. See *Ameron Automotive Centers*, supra at fn. 10; and *New Process Co.*, supra at 731–732.

court of jurisdiction over the subject matter of the Company's complaint. General Counsel does not contend that the Company's complaint was unlawful either because it lacked any reasonable basis in fact of law or because it was motivated by a desire to retaliate against the Company's employees. Compare, *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983). General Counsel's rationale is incomplete. A state court proceeding is not enjoinable as an unfair labor practice simply because it involves the same subject matter as a pending Board proceeding. Rather there are other considerations. First, does the state court proceeding involve interests which are deeply rooted in local responsibility? Thus, picket line violence may be the subject of both state court and Board proceedings, because the maintenance of law and order is a matter of strong local interest. Second, do the two proceedings involve at least in part, significantly different issues and remedies? Third, does the state court proceeding create a real risk of interference with the Board's jurisdiction? See *Sears Roebuck v. Council of Carpenters*, 436 U.S. 180 (1978). These considerations mitigate asainst finding a violation in this case. First, as *Sears Roebuck* makes clear, the laws of trespass are a matter deeply rooted in local interest and responsibility. Compare *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), involving a state court proceeding which dealt with the legality of alleged organizational picketing, i.e., an issue which did not involve a compelling state interest. Second, although the issues in the present unfair labor practice and state court proceedings overlap, they are not entirely coextensive. The Company could prevail in the unfair labor practice proceeding and still be left without a remedy, because the Board would simply dismiss the unfair labor practice proceedings. Therefore the Company was justified in maintaining its trespass action in order to preserve its legal position. Third, and most important, the state court indicated that it would defer to Federal law, and declined to proceed on the complaint pending disposition of the unfair labor practice proceeding. Therefore there is little likelihood of a conflict between the state court and Board proceedings. If the Board were to find a violation, the state court ruled in favor of the Company, and the Company sought to enforce that judgement, then General Counsel could take appropriate action. However in the present posture of this case, a finding of a violation is not warranted.

B. *Alleged Surveillance*

The complaint alleges in sum that on numerous occasions since March 21, 1988,[5] the Company by various agents (all female members of the Company's personnel staff) engaged in illegal surveillance of employee's union activities by remaining in close proximity to Roy Gonzales while he was in the hospital cafeteria, taking down names of employees who met with Gonzales, and taking notes during employees' conversations with Gonzales. The Company by its answer denies these allegations ''except to the extent that it admits that it monitored the activities of Roy Gonzales while he was on Respondent's premises.''

International Representative Gonzales testified concerning the renewed organizational activity in 1988, and his testimony was corroborated by employee witnesses for General Counsel. Gonzales testified that he resumed his visits to the cafeteria on March 21, and thereafter visited the cafeteria on March 22 and 24, April 11, 12, 14, 18, 20, 26, and 28, May 9, 10, 17, 27, and 31, and June 6 and 7. He followed the pattern which he began in the spring of 1987. Gonzales would arrive in the cafeteria in late morning, order food, and remain in the cafeteria for about 2 to 4 hours. He usually seated himself at a table in the northeast corner, and talked with employees. However if other employees invited him to join them at their table, he would do so. On two occasions Gonzales was accompanied by one or two other nonemployee union representatives. The Company did not attempt to exclude or remove Gonzales. Instead the Company used a different approach. On each occasion, female members of the Company's personnel staff would either be present when Gonzales arrived or would arrive shortly thereafter. They included among others Labor Relations Supervisor Jill Beaver and Employment Specialist Tina Braid, nee Patton. On each occasion they would seat themselves as closely as possible to Gonzales. If a seat opened up next to Gonzales or an employee with whom he was speaking, one of the office personnel would move in and occupy the seat. If Gonzales moved to another table, the office person would follow him and sit down at the other table. The office personnel operated sometimes in groups or pairs and sometimes in rotation. Sometimes they had lunch on these occasions, and other times they did not order food. On at least one occasion Braid had a writing pad and was using it. (Whether this occurred on more than one occasion is a matter in dispute.) Employee Robert Holbrook testified that on one occasion in March a person (identified by other witnesses as Braid) accompanied by Jill Beaver, had a writing pad. They were seated near a table where Gonzales, Holbrook, and other dietary employees were talking. Holbrook commented to Gonzales that it was sad that the men were upstairs having coffee while the women were downstairs doing all the dirty work for them. At this point Braid asked Holbrook his name. Holbrook showed her his identification badge, and Braid wrote down his name. Although Braid testified that she used a pad only once, neither Beaver nor Braid denied that this incident occurred. I credit Holbrook, and I find that the incident is evidence of the Company's purpose in engaging in this course of conduct. Gonzales testified that on two occasions, when he commented to Beaver that what she was doing was childish or ridiculous, Beaver replied that she was only doing her job. Beaver, in her testimony did not deny these conversations. I credit Gonzales, and I find that Beaver's replies confirm that her actions were part of an intentional company policy (whatever the motive may have been). The predictable effect of this course of conduct by the Company was to inhibit discussion of union activity among Gonzales and the employees.

The Company's witnesses, in sum, admitted that they closely observed Gonzales and employees who spoke with him while they were in the cafeteria. They advanced an assortment of reasons for doing this. Assistant Vice President Jenkins testified that Gonzales returned to the cafeteria on March 14, that Jenkins was so informed by the personnel office, and that he and Supervisor Beaver immediately proceeded to the cafeteria to observe him. Beaver remained until Gonzales left. The next day Beaver again observed Gonzales while he was in the cafeteria, and followed him when he left. As will be discussed, Beaver reported that she lost track of

[5] All dates in this section are for 1988 unless otherwise indicated.

Gonzales. Jenkins testified that as a result of this report, he instructed Beaver, Braid, another personnel supervisor, and eventually other members of the personnel staff to keep Gonzales under constant observation while he was in the hospital. Jenkins instructed them to ''keep track of his whereabouts and who he was talking to and where in the cafeteria, and if he was in any other area of the organization'' and to record the information which they obtained. Jenkins testified that when he learned that Braid used a note pad in the cafeteria, he told her to stop this practice and to record the information later. Jenkins testified that the Company engaged in this course of conduct because (1) he was concerned that Gonzales might have gone into patient care areas, (2) he was concerned that Gonzales was talking to employees on their worktime, and (3) he needed the information in connection with the pending unfair labor practice charges. Beaver testified in sum that on March 15 she followed Gonzales out of the cafeteria and eventually lost track of him, and did not see where he went, but that based on his movements, she believed that he went upstairs. Beaver reported these movements to Jenkins. However although the Company observed Gonzales many times after that, no one asked him where he went that day. Beaver testified that Jenkins told her to monitor Gonzales' activities ''very closely,'' that she did so, and that the personnel staff including herself ''sat closer to him in the cafeteria,'' and ''walked out with him when he was leaving.'' Beaver corroborated Jenkins' testimony concerning the reasons for their course of action. She also testified concerning three occasions on which she observed Gonzales talking in the cafeteria to employees whom she had reason to believe were on their worktime. On one occasion she saw Gonzales talk to and leave the cafeteria with four dietary employees. She checked with a dietary supervisor, who said she thought the employees were on duty. On a second occasion, Beaver saw and heard dietary employee Brad Kurczewski come over to Gonzales, saying ''You're usually not here when I have breaks or lunch, so I'm going to take a couple minutes now to talk to you.'' Beaver inferred from this remark that Kurczewski was on duty, but she did not check with his supervisor. (Kurczewski testified that he did not have fixed breaktimes.) On the third occasion, Beaver saw Gonzales talking to a dietary employee who was working at a grill. At no time did the Company take any disciplinary action against an employee for allegedly engaging in conversations in the cafeteria on their worktime. Employment Specialist Braid, ln her testimony, admitted that pursuant to Jenkins instructions, she regularly observed Gonzales ln the cafeteria. Braid testified that on one occasion she used a notebook in the cafeteria, but that Jenkins told her to stop this practice, and she did so. I credit Braid in this regard.[6]

The problem with the Company's explanations for its obvious surveillance of Gonzales and employees who spoke with him in the cafeteria, is that the explanations bear little relation to the Company's actions. In sum, the explanations are demonstrably pretexts. The Company had no factual basis for believing that Gonzales sought to enter patient care areas or other areas that were closed to the public. No one ever claimed to have seen him in such areas. Even if the Company had a good-faith belief that Gonzales was engaging in such conduct (which it did not) this would not have justified the Company's conduct in listening in on employees' conversations. If the Company had reason to believe that employees were taking breaks in the cafeteria on their working time, then this would be a matter between the employees and their immediate supervisors. However the Company took no disciplinary or other action to curb this alleged practice, other than to continue listening in on employees' conversations concerning union activity, and to do so in a flagrant and conspicuous manner. Gonzales admitted to the Company from the time he was first asked, that he was engaged in organizing the RNs. Therefore the Company had no legitimate reason to listen in on employee conversations for the purpose of preparing for the present proceeding, even if the nature of their conversations were an issue in this case. I find that the reasons advanced by the Company are pretextural. Having failed ln its efforts to exclude Gonzales from the cafeteria, the Company sought to thwart organizational talk by conspicuously listening in on employees' conversations with employees. The Company did so in an intimidating manner. When employee Holbrook complained about this surveillance, Braid asked him for his name and wrote it down on her pad in his presence. Although Braid did this only once, she was undisputedly acting as a company agent. Therefore the Company was responsible for her actions. The Company made its point. Moreover the Company continued to record the names of employees who spoke to Gonzales ln the cafeteria, and admits that this was a purpose of its surveillance. I find that the Company engaged in surveillance of Gonzales and employees who spoke to him ln order to discourage such conversation, and specifically in order to discourage conversation concerning organizational activity.

I find that the Company violated Section 8(a)(1) of the Act by engaging in surveillance of employees' union activities, specifically, by its agents intentionally remaining in close proximity to Gonzales while he was talking with employees ln the cafeteria, and on one occasion openly taking down names of employees who met with Gonzales. As the employees were engaging in lawful protected concerted activity by meeting and talking with Gonzales, the Company acted unlawfully by engaging in surveillance of such activity. *Montgomery Ward & Co. v. NLRB*, 728 F.2d 389, 391 (6th Cir. 1984). The Board has held that ''management officials may observe public union activity, particularly where such activity occurs on company premises, without violating Section 8(a)(1) of the Act, unless such officials do something out of the ordinary.'' *Metal Industries*, 251 NLRB 1523 (1980). However the Company's reliance on this line of cases (Br. 25–26) is misplaced. First, dining table conversation, unlike handbilling at a plant entrance, is not ''public'' union activity. See *Hawthorn Co.*, 166 NLRB 251 (1967), enfd. in pertinent part 404 F.2d 1205, 1208–1209 (8th Cir. 1969), in which the Board held that the employer engaged in unlawful surveillance when its foreman sat at employees' tables during coffee breaks, in order to discourage them from engaging in organizational activity. Second, in furtherance of its surveil-

[6] Gonzales, in his testimony, indicated that he observed Braid with a pad on only one occasion. As Gonzales was the one person who was invariably present when company observation took place, his testimony was particularly significant. Employee Karen Burgess initially testified that she always saw Beaver and Braid with a writing pad. However on being confronted with her affidavit she admitted that she saw Braid with a pad only once, in March. None of General Counsel's other witnesses unequivocally described more than one occasion when Braid was seen writing on a pad in the cafeteria.

lance, the Company acted in a manner which was plainly ''out of the ordinary.'' See *Hoschton Garment Co.*, 279 NLRB 565, 566 (1986), cited by the Company (Br. 26), in which the Board held that an employer engaged in unlawful surveillance when its manager ''stood very close'' to a union representative who was engaged ln handbilling at a plant entrance (plainly ''public activity''). See also *Crown Cork & Seal Co.*, 254 NLRB 1340 (1981); and *New Process Co.* supra, 290 NLRB at 717 (employer engaged in unlawful surveillance by taking notes while observing public handbilling). Moreover, the surveillance was unlawful because it was unlawfully motivated, i.e., the Company sought to discourage contact between Gonzales and the employees and to discourage talk of union activity. Thus the Board has held that although an employer normally has the right to observe employees at their work stations, it cannot do so for discriminatory reasons. *New Process Co.*, supra, 290 NLRB at 717–718.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in surveillance of employees' union activities, and by selectively and disparately denying and attempting to deny nonemployee union organizers access to the cafeteria at its hospital, the Company has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Company has violated Section 8(a)(1) of the Act, I shall recommend that it be required to cease and desist from such conduct and from like or related conduct, and to post the usual notices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, Oakwood Hospital, Dearborn, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Denying or attempting to deny nonemployee union organizers access to the cafeteria at its Hospital while permitting other visitors and guests of hospital personnel to use the cafeteria, or otherwise selectively and disparately denying such organizers access to the cafeteria.

(b) Engaging in surveillance of conversations and meetings between employees and union organizers, or of other employee union activity.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its hospital in Dearborn, Michigan, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''